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05/01/2006

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EXAMINER

CHAMBERS, MICHAEL S

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, line 16 recites the limitation "the tubular lighter" in line 1. It appears the term "member" is missing from the claim.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is dependent on itself. It will be assumed the claim depends from claim 11.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3,6-7,11,13, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franssen (6918843) in view of Adorjan (829749). Franssen discloses the elements of claim 1, (abstract, fig 1,2) however it fails to disclose means for

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compressing the weights. Adorjan discloses a means for compressing variable weights in a tubular shaft (fig 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the means for compressing weights in a tubular shaft of Adorjan with the apparatus of Franssen in order to prevent multiple weights from making a noise and distracting the batter.

As to claim 3: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 6: Franssen discloses a flanged and extended portion (fig 2).

As to claim 7: Franssen discloses a threaded portion (fig 2).

As to claim 11: Franssen discloses an outer cap (fig 2).

As to claim 13: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 16: Franssen discloses a flanged and extended portion (fig 2).

As to claim 17: Franssen discloses a threaded portion (fig 2).

Claims 9,10,19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franssen (6918843) in view of Ador (829749) as applied above and further in view of Official Notice . Official Notice is taken that the use of plastic and aluminum is well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to select any one of several equivalent materials including aluminum and plastic based on cost and design considerations.

Also,

Claims 1,3,6-7,11,13, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen (3116926) in view of Franssen (6918843). Owen discloses the

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elements of claim 1, however it fails to disclose an outer diameter less than the diameter of a conventional bat (fig 2, 2:51-54). Franssen discloses an outer diameter less than the diameter of a conventional bat (fig 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the bat diameter of Franssen with the apparatus of Owen in order to permit the training bat to be used by a greater population due to size and weight considerations.

As to claim 3: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 6: Franssen discloses a flanged and extended portion (fig 2).

As to claim 7: Franssen discloses a threaded portion (fig 2).

As to claim 11: Franssen discloses an outer cap (fig 2).

As to claim 13: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 16: Franssen discloses a flanged and extended portion (fig 2).

As to claim 17: Franssen discloses a threaded portion (fig 2).

As to claim 18: Owen discloses a compression spring (fig 2). The position of the spring is not critical to the apparatus. The spring could be interchanged with the weights without affecting the operation of the device.

Claims 9,10,19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen (3116926) in view of Franssen (6918843) as applied above and further in view of Official Notice . Official Notice is taken that the use of plastic and aluminum is well known in the art. It would have been obvious to one of ordinary skill in

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the art at the time of the invention to select any one of several equivalent materials including aluminum and plastic based on cost and design considerations.

***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 571-272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

829749\*3116926\*6918843\*514420\*5634856\*357  
8801\*0558320

April 27, 2006

Michael Chambers  
Examiner  
Art Unit 3711

  
EUGENE KIM  
SUPERVISORY PATENT EXAMINER